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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VIVIAN A. SCHRAMM and MICHAEL R. SCHRAMM

Appeal 2008-3347
Application 09/707,156
Technology Center 1700

Decided: September 19, 2008

Before BRADLEY R. GARRIS, THOMAS A. WALTZ, and
ROMULO H. DELMENDO, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of all pending claims 1-14 and 21-25. (Final Office Action entered May 24, 2006). We have jurisdiction under 35 U.S.C. § 6(b).

Appellants state that the claimed invention “relates to a spill-resistant, self-contained container of an edible particulate matter with a lollipop type

hard candy which is removably contained within the container.” (Spec. 4, ll. 14-16).

Representative claim 1 reads as follows:

1. A container for inhibiting the spillage of contents of said container, wherein said container defines an inner cavity and a funnel extending into said inner cavity to provide communication between said inner cavity and the exterior of said container, and wherein said container removably contains at least one substance of the following group of substances comprising an edible particulate candy substance, an edible flowable candy substance, and a candy article substance.

The prior art references relied upon by the Examiner to reject the claims on appeal are:

McCombs	US 1,254,714	Jan. 29, 1918
Meth	US 3,464,599	Sep. 2, 1969
McCaffery	US 3,781,164	Dec. 25, 1973
Price	US 3,840,678	Oct. 8, 1974
Williams	US 4,714,174	Dec. 22, 1987
Kennedy	US 4,869,390	Sep. 26, 1989
Patterson	US 5,105,975	Apr. 21, 1992
Schramm	US 5,246,046	Sep. 21, 1993
Coleman	US 5,370,884	Dec. 6, 1994
Martindale	US 5,758,797	Jun. 2, 1998
Hoeting	US 5,993,870	Nov. 30, 1999
Schramm	RE 36,131	Mar. 9, 1999
Baker	WO 00/19803	Apr. 13, 2000
Schramm ¹	US 6,386,138	May 14, 2002
Hunter	GB 1,428,356	Mar. 17, 1976

¹ The Examiner does not list Schramm ‘138 in the Evidence Relied Upon section of the Answer (Ans. 3). However, this reference is applied against the appealed claims (Ans. 11), and is acknowledged as part of the relied upon evidence and discussed by Appellants. (Br. 4, 11).

Beutlich	GB 1,485,581	Sep. 14, 1977
Corteggiani (as translated)	FR 2,673,917 A1	Sep. 18, 1992
Tomatsu ² (as translated)	JP 11-227388	Aug. 24, 1999

Product Alert³, v29, n15, part 1, August 9, 1999

Product Alert⁴, v29, n15, part 2, August 9, 1999

Product Alert⁵, v28, n6, March 23, 1998

CandyWarehouse webpage, www.candywarehouse.com/sourpunpop24.html,
March 27, 2003.

Exhibit A: Felix Powder Pop Photo, not dated

Exhibit B: Felix Sour Punker Pop, not dated

Exhibit D: Felix Sour Punker Pop webpage,
www.mexicool.com/weblucas/factory/punker.htm, March 27, 2003.

Exhibit F: Lucas/Felix Punkerpop Billing, Oct. 29, 1999

Exhibit G: Lucas Muecas Photo, not dated

The following rejections are before us for review⁶:

² The Examiner and Appellants refer to this reference as Pilot Ink (JP ‘388). (Ans. 5; Br. 4). For our purposes, we will refer to it as Pilot Ink.

³ The Examiner and Appellants refer to this reference as Product Alert (8/9/99, part 1). (Ans. 5, Br. 4).

⁴ The Examiner and Appellants refer to this reference as Product Alert (8/9/99, part 2). (Ans. 5, Br. 4).

⁵ The Examiner and Appellants refer to this reference as Product Alert (3/23/98). (Ans. 5; Br. 4).

⁶ The Examiner has withdrawn the §§ 102(e) /103 rejection set forth in the Final Office Action mailed May 24, 2006 (identified by Appellants as Ground 5 (Br. 4)), because it is a duplicate rejection. (Ans. 2, ll. 17-22).

1. Claims 1-14⁷ are rejected under 35 U.S.C. § 112, ¶1, as lacking adequate written description support (Ans. 5).

2. Claims 1-14 and 21-25 are rejected under 35 U.S.C. § 103(a) as unpatentable in view of the combined teachings of Price, Hunter, Williams, Schramm '046, Martindale, Kennedy, Beutlich, McCombs, Meth, Patterson, Corteggiani, Pilot Ink, McCaffery, Product Alert (3/23/98), Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse, Exhibits A, B, D, F, and G, Baker, Coleman, and Hoeting (Ans. 5-6).

3⁸. Claims 1-14 and 21-25 are rejected under 35 U.S.C. § 103(a) as unpatentable in view of the combined teachings of Product Alert (3/23/98), Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse, Exhibits A, B, D, F, and G, Baker, Coleman, Hoeting, Price, Hunter, Williams, Schramm '046, Martindale, Kennedy, Beutlich, McCombs, Meth, Patterson, Corteggiani, Pilot Ink, and McCaffery (Ans. 6-10).

4. Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of Schramm '046 and claims 1-11 of Schramm RE '131 in view of Price, Hunter, Williams, Schramm '046, Martindale, Kennedy, Beutlich, McCombs, Meth, Patterson, Corteggiani, Pilot Ink, McCaffery, Product Alert (3/23/98), Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2),

⁷ In the Grounds of Rejection section of the Brief (Br. 4), Appellants state claims 1-4 are rejected under 35 U.S.C. § 112(1). However, Appellants acknowledge the correct rejection of claims 1-14 in their Argument Section. (*Id.* 14).

⁸ Although the Examiner and Appellants list grounds of rejection 2 and 3 separately, the Examiner lists the same combination of references for each ground (Ans. 5-6), and Appellants argue the grounds together. (Br. 4-9).

Candy Warehouse, Exhibits A, B, D, F, and G, Baker, Coleman, and Hoeting (Ans. 10-11).

5. Claims 1-14 and 21-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of Schramm '138 in view of Price, Hunter, Williams, Schramm '046, Martindale, Kennedy, Beutlich, McCombs, Meth, Patterson, Corteggiani, Pilot Ink, McCaffery, Product Alert (3/23/98), Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Candy Warehouse, Exhibits A, B, D, F, and G, Baker, Coleman, and Hoeting (Ans. 11-12).

We AFFIRM 1, 2, and 3 but REVERSE rejections 4 and 5.

ISSUES

Have Appellants shown that the Examiner erred in finding claims 1-14 lack written description support?

Have Appellants shown error in the Examiner's determination that the subject matter of claims 1-14 and 21-25 would have been obvious to one of ordinary skill in the art in view of the combined teachings of the prior art within the meaning of 35 U.S.C. § 103(a)?

Have Appellants shown that the Examiner erred in determining that the subject matter of claims 1-14 and 21-25 is unpatentable under the judicially created doctrine of obviousness-type double patenting over claims 1-9 of Schramm '046 and claims 1-11 of Schramm RE '131 in view of the prior art?

Have Appellants shown that the Examiner erred in determining that the subject matter of claims 1-14 and 21-25 is unpatentable under the

judicially created doctrine of obviousness-type double patenting over claims 1-29 of Schramm '138 in view of the prior art?

FINDINGS OF FACT

The record supports the following findings of fact, as well as any other findings of fact discussed in this opinion, by at least a preponderance of the evidence.

1. Price discloses a non-spill cup for fluid foods including a cone 14 extending into the cup's inner cavity, where "[f]luid food 20 is dispensed in the cup 10, the level thereof maintained below the cone 14 so that it will not spill out or overflow the cone 14 if the cup 10 is overturned." (Col. 2, ll. 3-6; Fig. 2; emphasis omitted).
2. Price discloses the cone provides an open access for a second edible product to remove the cup's contents while preventing the contents from spilling if the cup is tilted when eating the cup's contents. (Col. 1, ll. 34-39).
3. Product Alert (3/23/98) discloses candy powder held in a resealable container with a lollipop attached to the container's cap to facilitate eating the lollipop and adhering candy powder after repeated dipping into the candy powder. (Product Alert, v28, n6, March 23, 1998).
4. The prior art discloses flowable candy. (Product Alert, v28, n6, March 23, 1998; Product Alert v29, n15, part 1, August 9, 1999; Product Alert v29, n15, part 2, August 9, 1999; Baker at 5, ll. 5-8; Coleman: col. 1, ll. 58-61, col. 2, ll. 60-62; Hoeting: col. 4, ll. 15-32).
5. The Examiner found flowable candy is necessarily subject to spilling. (Ans. 7, ll. 20-21).

6. Coleman and Hoeting disclose alternative embodiments without disparaging any of these embodiments as unsuitable for a container holding a flowable candy with lollipop. (Coleman: col. 1, l. 52 through col. 2, l. 20; Hoeting: col. 1, l. 18 through 2, l. 13).
7. After the filing of the Application, Appellants amended independent claims 1 and 8, by adding the phrase “edible flowable candy substance.” (Amendment filed February 14, 2005.)

PRINCIPLES OF LAW

“‘Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.’” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1734 (2007)(quoting *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966)).

“Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Graham v. John Deere Co.*, 383 U.S. 1 at 17-18.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739.

ANALYSIS

Lack of Written Description: Claims 1-14

After the filing of the Application, Appellants amended independent claims 1 and 8, adding the phrase “edible flowable candy substance” (FF7). Appellants argue that the original Specification, “which describes a substance that is edible and exhibits the property of flow, clearly provides support for the claimed ‘edible flowable candy substance.’” (Br. 14, ll. 20-21). Furthermore, Appellants contend that “even though an ‘edible flowable candy substance’ may read on a liquid, such reading on a liquid does not negate the satisfaction of 35 USC § 112, first paragraph’s written description requirement.” (*Id.* 15, ll. 8-10). Finally, “[A]ppellants urge that the test to determine new matter is not ‘Can the claims read on matter not disclosed in the specification?’ as the examiner implies but rather ‘Are the claims supported by the original specification?’” (*Id.* 15, ll. 14-16).

Appellants are mistaken. The proper test for determining whether claims comply with the written description requirement of 35 U.S.C. § 112, ¶1, is whether the originally filed disclosure of an application would have reasonably conveyed to one of ordinary skill in the art that the inventor had possession of the later claimed subject matter. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991). Additionally, a claim cannot be broadened when it is amended to include embodiments that are inconsistent with the original disclosure. *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1480 (Fed. Cir. 1998)(“[C]laims may be no broader than the supporting disclosure.”). Appellants’ original disclosure supported particulate candy as “free flowing edible” material. (Spec. 6, ll. 20-22). With Appellants’ amendment, the claimed invention now

encompasses *liquid* candy as an “edible flowable candy substance.” This is inconsistent with the original disclosure.

Appellants do not direct us to any evidence in the original disclosure that shows that a person skilled in the relevant art would have understood that the inventors had possession of the now claimed invention including a liquid embodiment for the “edible flowable candy substance.” (Br. 4-15). Accordingly, Appellants did not satisfy their burden to show the Examiner erred in rejecting claims 1-14 as violating the written description requirement of 35 U.S.C. § 112, ¶1. *In re Wertheim*, 541 F.2d 257, 263-64 (CCPA 1976)(“[W]e are of the opinion that the PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims. By pointing to the fact that claim 1 reads on embodiments outside the scope of the description, the PTO has satisfied its burden.”).

35 U.S.C. § 103 Rejections: Claims 1-14 and 21-25

Appellants contend that CandyWarehouse (reference date 3/27/03) is not available as prior art against the claims of the present application, which was filed on November 6, 2000.⁹ (Br. 5, ll. 4-10).

⁹ In their Specification, Appellants’ claim benefit, under 35 U.S.C. § 120, of earlier filed applications. (Spec. 2, ll. 10-11). However, the Examiner found that Appellants’ application has an effective filing date of November 6, 2000 because the earlier applications do not support the presently claimed subject matter. (Ans. 4-5). Appellants do not contest the Examiner’s finding as to the effective filing date and indeed assert: “The appellants also respectfully point out that appellant’s application, [has] a filing date of November, 06, 2000.” (Br. 5, ll. 4-5).

The Examiner states that CandyWarehouse is used to show that “like any other flowable material, the flowable candy would *inherently* (based on the law of gravity) be subject to spilling.” (Ans. 7, ll. 20-22). Furthermore, the Examiner states: “CandyWarehouse and the exhibits [A, B, D, and G] either have no date or have a date later than appellants’ effective filing date . . . [but] are only being used to put a face, if you will, on the description of the product described in Product Alert (3/23/98).” (*Id.* 8, ll. 16-17).

We agree with the Examiner. References can be used to show a state of universal fact though published later than an application’s filing date. *In re Wilson*, 311 F.2d 266, 268-269 (CCPA 1962). Here, the Examiner has relied on these references merely to show a state of fact, namely to show that flowable candy would necessarily be subject to spilling.

Obviousness Rejections of Claims 1-14 and 21-25

Appellants group claims 1-14 and 21-25 together. Accordingly, we select claim 1 as representative and confine our discussion to this claim. 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue “that the teachings of Price (‘678), Product Alert (3/23/98) . . . as well as all of the other cited prior art, are far removed from that of the invention claimed by the appellants.” (Br. 5, ll. 11-13). Appellants contend that Price “is directed towards ‘fluid food’ in combination with a breadstick spoon and a ‘non-spill cup’. . . . While food in general and candy in particular both define edible matter . . . candy, the subject of the appellant’s application, does not define ‘food.’” (*Id.* 5, ll. 13-

19). Additionally, Appellants argue that Price “did not contemplate or teach such sub-category of food (i.e. candy) in combination with the ‘non-spill’ cup.” (Br. 5, ll. 28-29). Therefore, Appellants contend that “there would not have been the motivation to combine the references as required by the examiner’s assertion of obviousness.” (*Id.* 5, ll. 25-27).

The Examiner found Price discloses the claimed subject matter except for the claimed container contents of at least one of “an edible particulate candy substance, an edible flowable candy substance, and a candy article substance.” (Ans. 6, ll. 12-22; 7, ll. 11-13; FF 1, 2). The Examiner also found: “[A] candy powder in a container with a lid with an attached lolli . . . is the product disclosed in Product Alert (3/23/98) and Product Alert (8/9/99), parts 1 and 2.” (Ans. 8, ll. 9-12; FF 3). Furthermore, the Examiner found Product Alert (3/23/98), Product Alert (8/9/99, parts 1 and 2), Baker, Coleman, and Hoeting disclose flowable candy. (*Id.* 7, ll. 16-19; FF 4). Finding “flowable candy would *inherently* (based on the law of gravity) be subject to spilling” (*Id.* 7, ll. 20-21; FF 5), the Examiner concludes that “modify[ing] Price in view of the art taken as a whole [by] substitut[ing] one conventional spillable, material for another conventional spillable, material, and one that is edible as well, is seen to have been obvious in view of the art taken as a whole. (*Id.* 9, ll. 1-4).

We agree with the Examiner. The combination of a teaching of a non-spill container (with a funnel for holding edible flowable contents into which another edible product is dipped to facilitate eating the edible flowable contents) with a teaching of flowable candy that is held in a container to facilitate eating by dipping simply combines known elements with no change in their respective functions. One of ordinary skill in the art would

have found the combination obvious, as familiar elements are used in a known manner to achieve predictable results. *KSR*, 127 S. Ct. at 1739.

Appellants contend:

[T]here are substantial differences in the contents of the current inventive container and the containers of the previous inventions. . . . [A]ppellants urge that such difference in container contents contributes to the patentability of the subject invention.

(Br. 6, ll. 19-21).

This argument is unpersuasive. A person having ordinary skill in the art would have found it obvious to fill the prior art non-spill containers with an edible, spillable material such as candy to obtain the benefit of the non-spill container. *KSR*, 127 S. Ct. at 1740. (“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.”). Here, Appellants do not direct us to any evidence of nonobviousness, such as unexpected results, for the claimed invention relative to the prior art.

Appellants argue “that the product alert and like references . . . merely confirm the appellant[s’] assertion of the long felt need for a solution to the problem of spillage of flowable candy, especially flowable candy contained in a container that is combined with a lollipop.” (Br. 6, ll. 6-11).

This argument is not persuasive because it is unsubstantiated by any evidence (e.g., declaration evidence). *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006)(“Absent a showing of long-felt need or the failure of others, the mere passage of time without the claimed invention is not evidence of nonobviousness.” (Quoting *Iron Grip Barbell Co., v. USA Sports, Inc.*, 392 F.3d 1317, 1325 (Fed. Cir. 2004))).

Appellants argue “that the Coleman and Hoeting art provide negative teachings.” (Br. 8, l. 4). Particularly, Appellants argue:

[I]f [applicants’] invention was obvious to one having ordinary skill in the art, then inventors such as Coleman and Hoeting who had access to art having containers with funnels, would have solved the problem as the applicants have done. Instead . . . Coleman and Hoeting have negatively taught spill resistance of particulate candy with conventional non-funneled containers that are in fact highly spillable.
(*Id.* 9, ll. 2-8).

Though Coleman and Hoeting may disclose a disadvantage of conventional non-funneled containers that are spillable, the Examiner relied on Price for the teaching of a non-spillable container. Hence a person skilled in the art would have understood that the use of Price’s container would have eliminated the problem of spillage with particulate candy.

The Examiner also relied on the same combination of the prior art to reject claims 1-14 and 21-25, but with particular focus on the teachings of Product Alert (3/23/98). In this rejection, the Examiner states Product Alert (3/23/98) discloses every limitation of claim 1 except for “a funnel to inhibit spilling.” (Ans. 10, ll. 8-9; FF 3, 4). Furthermore, the Examiner states:

As evidenced by Price and the other secondary art, discussed above, it was notoriously conventional in the art to provide funnels for containers of all types – holding all types of flowable materials, both solids and liquids, both edible and inedible - so that the funnels prevent spillage of the flowable contents. To modify Product Alert (3/23/98) and provide a funnel for its art recognized and applicants[’] intended function, for a product inherently known to be spillable, would have been unequivocally obvious.
(*Id.* 10, ll. 9-14).

Appellants rely on the same arguments, as discussed above, “travers[ing] the examiner’s rejection on the basis that the appellant’s invention in the appended claims is substantially different than the cited prior art patents and on the basis of negative teachings by the cited patents.” (Br. 5, ll. 2-4).

As before, we find Appellants’ arguments unpersuasive. The modification of Product Alert (3/23/98) with a known prior art funnel for its art recognized advantages would have been obvious to one of ordinary skill in the art. *KSR*, 127 S. Ct. at 1739.

For these reasons we find Appellants have not shown the Examiner reversibly erred in determining the subject matter of claims 1-14 and 21-25 obvious in view of the prior art.

Double Patenting Rejection over Claims 1-9 of Schramm ‘046 and Claims 1-11 of Schramm RE ‘131 in View of the Applied Prior Art
Schramm ‘046

The Examiner rejects claims 1-14 and 21-25 under the judicially created doctrine of obviousness-type double patenting based on claims 1-9 of Schramm ‘046. (Ans. 10, l. 15 through 11, l. 16). However, under 35 U.S.C. § 251, this patent has been surrendered and is therefore not enforceable. *See also* 37 C.F.R. § 1.178(a)). Accordingly, the claims of this patent cannot support a double patenting rejection.

Schramm RE ‘131

The Examiner contends: “Claims 1-14 and 21-25 . . . differ from the claims of . . . RE 36,131 in the recitation that the funnel containing container holds a flowable candy.” (Ans. 11, ll. 3-5). Relying on Product Alert

(3/23/98), Hunter, Williams, Schramm '046, Martindale, Kennedy, Beutlich, McCombs, Meth, Patterson, Corteggiani, Pilot Ink, McCaffrey, Product Alert (8/9/99, part 1), Product Alert (8/9/99, part 2), Baker, Coleman, and Hoeting, the Examiner states "it would have been obvious in view of the art taken as a whole to modify the funnel containing container[] of . . .

RE36,131 and employ flowable candy and a lollipop associated with a holder." (*Id.* 11, ll. 5-8). Also, the Examiner states:

[A]ppellants have combined a conventional container structure, conventionally employed to address appellants' problem of spillage from the container, and substitutes one flowable, *conventional* product for another flowable, *conventional* product, which would have been *known* to have had a problem of potentially *spilling* . . . and the combination of such conventional container and conventional product achieves no new or unexpected result.
(*Id.* 15, l. 21 through 16, l. 4).

Appellants argue:

[RE 36,]131 [is] directed toward resisting the spillage of liquid bubble solution whereas appellant's current application is directed towards resisting the spillage of candy powder, candy beads, or other flowable candy substance while having an open container access so as to be able to coat a lollipop type confection with the candy substance.
(Br. 10, ll. 2-6).

In view of the record, we find that the Examiner has not successfully established obviousness-type double patenting. The Examiner has not directed us to sufficient evidence to support a reason for combining the subject matter of the conflicting claims of RE 36,131, which is directed to making bubbles, with the prior art references, which are directed to candy. (Ans. 4-16). Here, the differences between the contents and use of the container in the claims of the reissue patent and the prior art candy

references are such that one of ordinary skill in the art would have had no reason to make the proposed combination. For these reasons, we do not uphold the Examiners' double patenting rejection of claims 1-14 and 21-25.

Double Patenting Rejection over Claims 1-29 of Schramm '138 in View of the Applied Prior Art

The Examiner bases a double patenting rejection on "modify[ing] the funnel containing container claims of [Schramm '138] and substitut[ing] one conventional content and container inserting element for another conventional content and inserting element (i.e., the particulate candy powder and lollipop for the dye and brush)." (Ans. 11, l. 19 through 12, l. 1).

Similarly, as discussed in the double patenting rejection above, we find there is inadequate evidence to support a determination that a person having ordinary skill in the art would have been led to replace liquid dye for coloring an Easter egg with candy that is eaten with a lollipop. Given the differences between the claimed apparatus having a colorable work piece (i.e., egg) for coloring with dye and powder candy in containers for eating with lollipops, we find that one of ordinary skill in the art would not have had any reason to make the proposed combination. Accordingly, we do not uphold the Examiner's double patenting rejection on this ground.

CONCLUSION

On this appeal record, Appellants have not shown that the Examiner erred in finding claims 1-14 lack written description support under 35 U.S.C. § 112, ¶1. Additionally, Appellants have not shown error in the Examiner's

determination that the subject matter of claims 1-14 and 21-25 would have been obvious to one of ordinary skill in the art in view of the combined teachings of the prior art within the meaning of 35 U.S.C. § 103(a). However, Appellants have shown that the Examiner erred in determining that the subject matter of claims 1-14 and 21-25 are unpatentable under the judicially created doctrine of obviousness-type double patenting over: claims 1-9 of Schramm '046 and claims 1-11 of Schramm RE '131 in view of the prior art; and claims 1-29 of Schramm '138 in view of the prior art.

Accordingly, the decision of the Examiner to reject claims 1-14 and 21-25 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tf/lis

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